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THE FACEBOOK, INC. and MARK ZUCKERBERG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC. and MARK ZUCKERBERG,

Plaintiffs,

v.

CONNECTU, INC. (formerly known as CONNECTU, LLC), PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA,

Defendants.

Case No. 5:07-CV-01389-RS

DECLARATION OF THERESA A. SUTTON IN SUPPORT OF PLAINTIFFS' MOTION TO SEAL PORTIONS OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT RE DEFENDANTS' LIABILITY PURSUANT TO CALIFORNIA PENAL CODE SECTION 502(C) AND 15 U.S.C. § 7704(A)(1) AND 15 U.S.C. § 7704(B)(1), THE DECLARATION OF CHRIS SHIFLETT IN SUPPORT THEREOF INCLUDING EXHIBITS 1-3; AND EXHIBITS 1, 2, AND 4 TO THE DECLARATION OF MONTE M.F. COOPER IN SUPPORT THEREOF

Date: February 13, 2008
Time: 9:30 A.M.
Judge: Honorable Richard Seeborg

Dockets.Justia.com

I, Theresa A. Sutton, declare as follows:

1. I am an associate with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel to Plaintiffs Facebook, Inc. and Mark Zuckerberg. I am licensed to practice law in the State of California. I have personal knowledge of the facts and circumstances set forth in this Declaration. If called as a witness, I could and would testify competently to the matters set forth herein. I make this Declaration pursuant to Civil L.R. 79-5(d).

2. Good cause exists to file under seal portions of Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment Re Defendants' Liability Pursuant to California Penal Code Section 502(c) and 15 U.S.C. § 7704(A)(1) And 15 U.S.C. § 7704(B)(1). The memorandum contains cites to and quotes of confidential materials contained in the following exhibits.

3. Good cause exists for sealing Exhibit 1 of the Declaration of Monte M.F. Cooper in Support of Plaintiffs' Motion for Partial Summary Judgment ("Cooper Declaration"). This exhibit contains excerpts from Mark Zuckerberg's April 25, 2006 deposition, in which he discusses confidential, proprietary and sensitive business information. The deposition was marked Highly Confidential pursuant to the Stipulated Protective Order, and therefore is subject to Local Civil Rule 79-5(d).

4. Good cause exists for sealing Exhibit 2 of the Cooper Declaration. This exhibit contains excerpts from Max Kelly's March 1, 2006 deposition, in which he discusses confidential, proprietary and sensitive business information. The deposition was marked Highly Confidential pursuant to the Stipulated Protective Order, and therefore is subject to Local Civil Rule 79-5(d).

5. Good cause exists for sealing Exhibit 4 of the Cooper Declaration. This exhibit was produced by a third party to this litigation, pursuant to the Stipulated Protective Order, and therefore is subject to Local Civil Rule 79-5(d).

6. Good cause exists for sealing the Declaration of Chris Shiflett in Support of Plaintiffs' Motion for Partial Summary Judgment ("Shiflett Declaration"). The Shiflett Declaration contains descriptions and discussions of materials marked confidential pursuant to the

Stipulated Protective Order, including Facebook's and ConnectU's source code.

7. Good cause exists for sealing Exhibit 1 to the Shiflett Declaration. This exhibit contains source code produced by Facebook, which is confidential, proprietary and commercially sensitive. This document, Bates numbered FBCA051064-1101, was produced and designated Confidential by Facebook pursuant to the Stipulated Protective Order, and therefore are subject to Local Civil Rule 79-5(d).

8. Good cause exists for sealing Exhibit 2 to the Shiflett Declaration. This exhibit contains source code produced by Facebook, which is confidential, proprietary and commercially sensitive. This document, Bates numbered FBCA051102-32, was produced and designated Confidential by Facebook pursuant to the Stipulated Protective Order, and therefore are subject to Local Civil Rule 79-5(d).

9. Good cause exists for sealing Exhibit 3 to the Shiflett Declaration. This exhibit contains source code produced by Facebook, which is confidential, proprietary and commercially sensitive. This document, Bates numbered FBCA051063, was produced and designated Confidential by Facebook pursuant to the Stipulated Protective Order, and therefore are subject to Local Civil Rule 79-5(d).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 7th day of January 2008, at Menlo Park, California.

/s/ Theresa A. Sutton /s/
Theresa A. Sutton

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 7, 2008.

Dated: January 7, 2008.

Respectfully submitted,

/s/ I. Neel Chatterjee /s/

I. Neel Chatterjee